

IT 96-48

Tax Type: INCOME TAX

Issue: Withholding Tax - Failure To File Return/Make Payment

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	No.
v.)	
)	FEIN:
TAXPAYER)	TYE: 12/31/87
)	6/30/88
Taxpayer)	Christine E. Ladewig
)	Admin. Law Judge
)	

RECOMMENDATION FOR DISPOSITION

Appearances: TAXPAYER appearing *pro se*.

Synopsis:

This matter comes on for hearing pursuant to the TAXPAYER's (hereinafter referred to as the "taxpayer") timely protest of the Notice of Deficiency dated July 21, 1994. Such Notice proposed tax deficiencies and penalties for the failure to file tax returns and pay over to the Department the Illinois Income Tax withheld from employee compensation. Following the submission of all evidence and a review of the record, it is recommended that the Notice of Deficiency be finalized as issued.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Notice of

Deficiency, showing a total liability due and owing in the amount of \$405.90. (Dept. Ex. No. 3).

2. TAXPAYER placed advertisements into newspapers and other broadcast media for corporate clients. As a result of financial difficulties, the taxpayer filed bankruptcy under Chapter 11 which later converted to Chapter 7 on May 9, 1989. The stay on these administrative hearing proceedings was lifted June 14, 1991.

Conclusions of Law:

Section 705 of the Illinois Income Tax Act provides that: "Every employer who deducts and withholds or is required to deduct and withhold tax under this Act is liable for such tax." See, 35 ILCS 5/705. In the case at hand, the Department's proposed assessment against the taxpayer is due to his failure to file tax returns and pay over to the Department Illinois Income Taxes it had withheld from employee compensation.

Pursuant to Illinois statute and case law, the Department's Notice of Deficiency is *prima facie* correct and is *prima facie* evidence of the correctness of the amount of tax due, as shown therein. A.R. Barnes and Co. v. Department of Revenue, 173 Ill. App. 3d 826 (1st Dist. 1988). Once the Notice of Deficiency is admitted into evidence the taxpayer must show that the notice is invalid by "producing competent evidence, identified with their books and records and showing that the Department's returns are incorrect." Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968); Masini v. Department of Revenue, 60 Ill. App. 3d 11 (1st Dist. 1978). Oral testimony is not sufficient to overcome the *prima facie* correctness of the Department's determinations. A.R. Barnes & Co. v. Department of Revenue, supra.

In the present case, TP, the taxpayer's president, testified that subsequent to the bankruptcy filing the creditor committee collected funds which to the best of his knowledge should have been distributed to the Department. Tr. p. 6. Taxpayer, however, failed to produce any documentation to

substantiate his claims. This oral testimony, absent documentary evidence, is not sufficient to overcome the *prima facie* correctness of the proposed assessment. Copilevitz v. Department of Revenue, supra; A.R. Barnes & Co. v. Department of Revenue, supra.

WHEREFORE, for the reasons stated herein, it is my recommendation that the Notice of Deficiency be finalized as issued.

Date:

Christine Ladewig
Administrative Law Judge